Justice of the Peace
and
LOCAL
GOVERNMENT REVIEW
ESTABLISHED 1837
[Registered at the General Post Office as a Newspaper]
LONDON:
SATURDAY, DECEMBER 27, 1958
Vol. CXXII No. 52 PAGES 849–864
Offices: LITTLE LONDON, CHICHESTER, SUSSEX
Chichester 3637 (Private Branch Exchange)
Showroom and Advertising:
11 & 12 Bell Yard, Temple Bar, W.C.2.
Holborn 6900.
Price 2*s*. 9*d*. (including Reports), 1*s*. 9*d*. (without Reports).

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NOTES OF THE WEEK

A Scottish Case of Desertion

The *Scotsman* of November 22, reported, anonymously, an interesting decision by Lord Guthrie in the Court of Session, dismissing a husband's action for divorce on the ground of alleged desertion.

The facts were unusual and distressing. Years ago it was stated, the husband had killed the younger son of the parties and been charged with murder. He pleaded insanity in bar of trial, and the plea was sustained, the result being that he was ordered to be detained until His Majesty's pleasure be known. After four or more years in a mental institution, he was discharged as cured and thereafter lived a normal business and social life. In the opinion of the medical authority the mental illness was not likely to recur although it might. He requested his wife to rejoin him, but she made no reply. The learned Judge was satisfied that she had refused for three years to live with her husband, and said that the question then was whether she had reasonable cause for her refusal. Having regard to the calamity that had occurred and her apprehension that the insanity might recur, he held that her refusal was reasonable and that therefore she was not guilty of desertion. He therefore dismissed the action.

Lord Guthrie referred to the "sorrowful circumstances" of the case and described it as one of the most difficult and poignant he had heard. It is impossible to read the account without feeling sympathy and pity for both parties. The action was undefended, and it may be that the wife, no less than the husband, would have been relieved if there had been a decree. The law has to be administered as it is, and not as something to be stretched to meet a sad case, and divorce cannot be by consent or mutual desire.

Receiving

Diplock, J., who delivered the judgment of the Divisional Court in *Director of Public Prosecutions* v. *Nieser* (*The Times*, November 22), called attention to what he described as the height of absurdity that may arise in consequence of the provisions of s. 33 of the Larceny Act, 1916.

The case was an appeal from the decision of justices who had dismissed two informations charging the respondent with offences of receiving property knowing it to have been obtained in circumstances amounting to a misdemeanour. The justices had found that though there was some evidence that at the time he knew that the goods had been obtained by some dishonest means, there was no evidence that he knew they were obtained by false pretences.

The learned Judge observed that the facts proved against the accused were precisely those facts from which in so many cases receivers' knowledge that the goods have been stolen was rightly inferred. There was, however, nothing in the evidence from which the justices could infer that the accused knew the property had been obtained in circumstances amounting to a misdemeanour as opposed to having been stolen. The appeal would be dismissed, but it seemed the height of absurdity that a receiver should commit no offence if he erroneously thought the goods had been obtained by a graver crime of stealing.

Simple larceny is a felony and obtaining goods by false pretences is a misdemeanour, and to that extent larceny is the more serious crime, but in many cases it is difficult to draw the line between the two. The legislature has recognized this and has provided that where a person is indicted for larceny and the evidence proves false pretences the jury may return a verdict of guilty of false pretences; conversely if a person is indicted for false pretences and the evidence shows the offence to be larceny the jury may still return a verdict of guilty of false pretences.

Prison Officers

"The days when a prison officer was merely a human watchdog have gone for good." So says Mr. S. P. H. Joel, an officer at Oxford prison, in the *Oxford Times*, under the general heading "Other Peoples Jobs."

Mr. Joel states that among prison officers it is the discipline officer who comes into closest contact with the prisoners. No matter what task has to be performed, the supervising officer has the opportunity to exercise an influence for the good on the men in his charge. He can demonstrate that even the most menial task has dignity if it is essential and worthwhile. In everything the officer does he should do his utmost to turn out each prisoner, at the expiration of his sentence, a better man than he was when he came in, striving to instil discipline and self-discipline into people who had known no real discipline and resent it.

Criminals are all too often criminals by choice, says Mr. Joel, and all too ready to regard the prison officer as an enemy rather than as someone who is anxious to help them. We agree, and it is well that those who are most keenly in favour of reformative treatment should realize that there exists this hard core of criminals by choice, who all too often bring discouragement and frustration to those who would like to help them. For the criminal by choice the immediate measures must be those that will best protect society.

Whatever else may be said about it, concludes Mr. Joel, the work of a prison officer is very seldom boring. This is good to read, for it could not always have been said with truth. Today there is an increasing number of men and women in the prison service who have a sense of vocation and show it by their personal interest in the prisoners and their desire to help those who show any signs of willingness to respond.

Driving on Motorways

The Preston By-Pass Motorway Traffic Regulations, 1958, have now been published and their main effects are summarized in a Ministry of Transport and Civil Aviation press notice dated November 28, 1958. The Motorway was opened on December 5, 1958. The press notice refers to seven main rules for drivers on the Motorway:

1. By reg. 5 one-way driving is compulsory at all times on the dual carriageways.

2. By reg. 6 (1) and (4) a vehicle must not be stopped or allowed to remain at rest on the carriageway unless compelled to do so by the presence of some vehicle, person or object.

3. By reg. 6 (2) and (3) broken down vehicles, or those which have to be stopped in an emergency, must be moved on to the verge as soon as is reasonably practicable and must not remain there longer than is necessary.

4. By reg. 7 reversing is prohibited except in special circumstances.

5. By regs. 8 and 9 vehicles must not be driven on to the verge except as provided in reg. 6 and must not be driven at all on to the central reservation.

6. By reg. 10, learner-drivers are not allowed to drive on the motorway.

7. By regs. 11 and 13 (1) (b) pedestrians are not to use the motorway except in specified circumstances and under certain conditions.

The maximum penalty for a breach of any regulation is a fine of £20.

Experience gained from the use of this motorway will be taken into consideration when regulations have to be drafted for the London–Birmingham Motorway which is due to be completed by the end of October, 1959.

The *Manchester Guardian*, in an article published on November 21, 1958, refers to reports made at a meeting at the Institution of Civil Engineers in London on November 20 by two highway engineers with expert knowledge of the construction and use of motorways. One came from Belgium and the other from California. They reported that, in spite of widely different circumstances in their respective countries, motorways have cut accidents by two-thirds and that their capital cost is repaid within a remarkably short time, in some cases in as little as five years.

The head highway engineer of the Belgian Ministry of Public Works stated that the new high-speed limited access roads in his country which link Brussels with other main centres have shown an accident rate 70 *per cent.* lower than that of ordinary main roads. His statement that the motorways pay for themselves in a period of five years is based on the estimated saving to the community in time and petrol and in general higher efficiency of road transport which results. The comparison with Belgium is of particular interest to this country because their problems are very similar to ours. They have to contend with a high density population, intensive use of land, concentrations of historic buildings, a complex road system in existence and highly developed public transport. It will be most interesting to see whether our experience proves as satisfactory as that of Belgium and California.

Adoption: The Question of Residence

By s. 2 (5) of the Adoption Act, 1950, it is provided that an adoption order shall not be made in England unless the applicant and the infant reside in England. Exactly what amounts to residence may be a difficult question to determine. In *Re Adoption Application No.* 52/1951 (1951) 115 J.P. 625; [1951] 2 All E.R. 931, an application was made by applicants who lived in Nigeria, but returned to England for periods of three months' leave every 15 months. Harman, J., did not accept the submission that they were resident here for the time being whilst on leave and held there was no jurisdiction to make an adoption order; residence denotes some degree of permanence, it does not necessarily mean that the applicant has a home of his own, but that he has a settled headquarters in this country.

This decision may be compared with that of a Scottish court in the recent case of *—A— Petitioners* (1958) Sc. L.T. Sh. Ct. Rep. 61. In this case a husband and wife sought to adopt a five year old illegitimate child of the wife. Her husband was a serving soldier who spent his leaves with the wife and child in her parent's home. An adoption order was made.

Any difficulty in this matter will be removed when s. 23 of the Children Act, 1958 (or, as seems likely, a corresponding provision in a consolidating statute) comes into force. Section 23 provides that an adoption order may be made on the application of a person who is not ordinarily resident in Great Britain and expressly excludes the operation of s. 2 (5) of the Adoption Act, 1950.

Civil Defence and Loss of Wages

We gather that representations are being made to the Government by the County Councils' Association on the subject of loss of wages by civil defence volunteers. At the time when the Association considered the matter, the position was that there could be no reimbursement of wages lost, either by reason of the normal civil defence exercises or on those exceptional occasions when civil defence volunteers have turned out to help in the event of floods and similar disasters. It appears that in Cornwall the county council have decided to meet claims for reimbursement of wages lost by civil defence volunteers who turned out in August, 1958, and formed rescue parties at the request of the police. The

question therefore is, in that county, whether the Treasury will allow the Home Office to pay civil defence grant on the amount disbursed by the county council. The general question is still under discussion, so far as we have seen. An argument can perhaps be framed, for refusing to reimburse civil defence volunteers who lose wages through attending normal exercises because when they joined the corps they knew that they might incur this loss. Even so, it seems bad policy to refuse reimbursement, since the civil defence corps cannot be composed entirely of persons who have private means, or even of persons who earn their living in an occupation which they can leave, without losing money for the time taken up by the exercise. And if persons in employment do not lose money, this means that employers are paying wages for time spent on a public service. Even if, by perverted ingenuity, a Treasury argument can be constructed for refusing reimbursement in these cases, refusal is surely bad policy, when volunteers are hard to get and to retain. It seems impossible to justify refusal where people leave their ordinary work and lose their wages, in order to engage in rescuing others in emergency at the request of a public authority.

Soliciting

The Bill designed to deal more effectively with the evils of prostitution has now been introduced, and there has naturally been a good deal of discussion on this most difficult subject. The question of annoyance by soliciting is one of those matters dealt with in the Bill, although we have not yet been able to give detailed consideration to this. It is constantly contended that proof of annoyance is not really convincing in the absence of the person annoyed, as a witness. It was pointed out by one member in the debate in the House of Commons that the real annoyance caused by prostitutes soliciting in the streets is not because a woman speaks to a man, but because of the number of prostitutes seen on the streets. This is regarded by many people as a public scandal and disgrace to our cities.

The point is often put forward that legislation against prostitutes is vindictive towards women and that the men who encourage them by accepting their offers are equally guilty. Morally they may be equally guilty, but the law does not punish prostitutes for being immoral, but for offending against other people by pursuing their calling in a way that offends against reasonable standards of behaviour in public. If a man offends by persistently soliciting women in the street he can be dealt with, as appears from our notes at pp. 721, 744, *ante*. One of the principle difficulties in these cases of men annoying women and women annoying men is that of inducing respectable people to come forward as witnesses in a class of proceeding with which they do not care to be associated.

Solicitors, Please Note

The President of the Probate, Divorce and Admiralty Division has directed that to enable the clerk of the rules when listing a Divisional Court appeal against a magistrates' court order, to have due regard to any other matrimonial proceedings pending between the same parties, the appellant's solicitor should certify whether any such proceedings exist.

Best Kept Village Competition

The Council for the Preservation of Rural England has been instrumental in getting rural community councils and county councils of social service in various parts of the country to organize best kept village competitions. The aim of these competitions is to keep villages tidy and especially free from litter. Reports show that they have clearly been helpful in those counties where they have been instituted. For instance, in Nottinghamshire where the competition has now been held for four years, the panel of judges has found that the competition has had an effect on villages which have not so far entered for the competition. Kent had a competition this year for the first time and the entries were so numerous that it has been decided to hold two competitions next year, one for East Kent and one for West Kent.

In Northumberland the competition was originally conceived as a positive contribution towards solving the litter problem when the county council asked for the help of the rural community council and other rural organizations. But in such a county which must inevitably look to the tourist for part of its prosperity the competition has had wider implications. As elsewhere the competition stimulated a great deal of interest and action. Cheshire is another county where the competition seems to have resulted in the local inhabitants taking an increasing pride in their surroundings and greater care of public property. There has been a considerable increase in the number of entries which, in the view of the community council, reflects a reversal of the dangerous attitude of casual indifference so prevalent immediately after the war. It has been noticeable that during the past year the inhabitants of the villages which entered the competition were encouraged to care, and continued to care even after the year's competition was over. In Suffolk, Lord Euston, after judging the competition, expressed astonishment at what the villages had achieved in getting everyone to cooperate in keeping the villages tidy. It was found also that churchyards were better kept than ever before and that there was an obvious improvement to house property such as in painting and decorating. One of the most interesting results in Suffolk was that one of the rural district councils provided a suitable annual award for their own competitors which stimulated more villages in their district to take part. Various kinds of trophies and prizes are given but the most usual is a wrought-iron weather vane or sign which can be erected on a suitable site in the village. Sometimes this has been made by one of the village craftsmen in the county.

Expenses of Governors of Educational Institutions

Members of governing bodies of educational institutions are debarred from receiving travelling, subsistence or financial loss allowances in respect of their attendance at meetings of governors because the Ministry of Housing and Local Government refuse to prescribe governing bodies under s. 111 (i) (*h*) of the Local Government Act, 1948.

A number of requests have been made by local authority associations since 1948 for a reversal of the Ministry's decision, for example, in 1956 representations were made by the County Councils' Association that inability to reimburse these expenses contributed to reluctance to accept appointments, caused hardship or dissatisfaction, and therefore adversely affected educational administration. Up to the present time, however, all representations have been rejected.

A member of a local authority is entitled to travelling or subsistence expenses only in respect of duties performed at a distance of more than three miles from his usual place of residence but there is no limitation of domicile affecting the right to receive financial loss allowances. In the past representatives from urban areas have not pressed

strongly for a change in the law: they were probably debarred by distance from claiming for travelling or subsistence allowances and by the time occupied from claiming other allowances. But the situation is very different in the rural areas and as technical colleges with extensive catchment areas continue to grow and multiply the problem will become increasingly acute.

Some authorities have already taken action by making individual application for the prescription of the governing bodies of such institutions: others have solved the difficulty by making the governors' meeting a sub-committee of the education committee. While this action may be satisfactory in certain cases what is wanted is a reversal of the attitude of Whitehall. If this is not achieved it will inevitably result in the practical disfranchisement of many rural areas—a disastrous result of petty niggardliness.

Under the present law there may be a way out. The Ministry could be approached to prescribe only those institutions having an extensive catchment area, leaving alone those bodies comprised of members living in a compact area. This would probably be an acceptable compromise under the existing law. We have, however, already referred to the general question of the powers placed in the hands of the Ministries. (J.P.N. at p. 550, *et. seq.*) Our view then was, and we adhere to it now, that the local authorities of this country can well do without the sort of government control which thinks it necessary to decide for them in great detail what they should pay members for subsistence and other allowances. The relaxation of government controls over local authorities was plugged by Mr. Brooke in Parliament and at many points east, west, north and south outside when proposing the establishment of the general grant: let him abolish this vexatious set of detailed instructions for a useful start.

ACCIDENT PRONE

By JOHN HALES-TOOKE

A Cambridgeshire village constable is fond of saying: "There are only two types of pedestrian in my village—the quick and the dead." This village spans a north-south main road.

A visitor to the petty sessional court which the officer attends fortnightly would note that a third of the cases heard by the justices concern traffic offences of one kind or another.

Many advocates and pressmen whose business takes them to court would confirm that the same ratio applies to other parts of the country as well.

It is not the job of the justices or the police to analyse the cause of every accident which leads to an offence.

If the main object of the Road Traffic Acts is to reduce the incidence of fatalities on the roads rather than to punish a wrongdoer for breaking the law, someone must clearly probe.

From one point of view, there is no excuse for anyone driving dangerously, or without due care and attention or in excess of a given speed limit. From another viewpoint one wonders why the majority of road-users are not constantly in trouble with the police for some or all of these offences.

Can one segregate the sheep from the goats? Clearly one can. If one examines the list of cases to be heard by any magistrates' court, a pattern will soon appear, if the examination is made over a period.

The majority of week-end motorists travel for pleasure. If they offend the traffic laws, many reasons can be advanced.

A driver may have had more of his eye on his girl than the road ahead. He may have been guilty of sheer bad judgment. For many selfishness is the root of the matter.

There is always the man who wants to show off the paces of his new car, or the impatient driver who dislikes trailing buses. As often as not he will overtake on a blind corner or half way up a hill rather than wait for a few hundred yards until he knows that he is safe.

Magistrates have a wider discretion to disqualify drivers than is appreciated at first sight. One wonders why they are not more inclined to use them.

If experiments are to be made and bias must be shown, let it be in favour of the innocent rather than the guilty road-user.

If a driver is guilty of a traffic offence when joy riding, there is no reason why he should not be penalized more heavily than if the accident arose out of some compulsion that was affecting him at the time.

Not so long ago a motorist was fined at a court in the adjacent division to that of the Cambridgeshire constable. His licence was also endorsed. He was convicted of driving at a speed dangerous to the public. Whether or not the magistrates' decision was right is not in point. The circumstances behind the case were tragic. No sooner had the driver left his wife in a London hospital than he was summoned to the north by telegram because a severe accident had befallen one of his children who had also been admitted to hospital.

There is no discretion to magistrates to grant a discharge in such a case, as the Road Traffic Acts prescribe specific penalties for the offence.

If a driver who acts wrongly in such circumstances is to be penalized heavily, how much more reason is there to condemn the motorist who had no reason whatever for acting as he did, apart from satisfying his own vanity or conceit as a driver.

If the facts be met face to face there are two inescapable conclusions. It is little use demanding that roads be improved and made safe unless at the same time the standards of driving are also kept up to an efficient basic standard. There are insufficient police patrols on the road to enforce such a standard, but this is no answer to the charge that comparatively few motorists drive with the same standard of care and skill as they do when they know that there is a police patrol in the offing.

One can often feel very much more sympathetic with the week-day motorist who drives for his living.

It is often said that the highest standard of road courtesy is shown by lorry drivers. Bus and coach drivers may well run them a close second. Without in any way detracting from the compliment one can draw a distinction between the driver who drives for his living, and the motorist who is not primarily concerned with driving for his livelihood.

For all the hazards and privations of the long distance drivers' life—and they are many—their lot is easier in some ways than that of the doctor who uses his car to dash from case to case. So many motorists who taxi themselves from call to call, keep one eye and a quarter of their mind on the road, and the remainder on the current problem. In particular one wonders why more barristers do not fall foul of the Road Traffic Acts. Many a counsel finds himself driving from one court to another with a minimum of time for the journey, and next to none for robing and meeting the next client at the journey's end.

One can reasonably sympathize with motorists who have to drive many miles after an already fatiguing working day.

One can hope that magistrates dealing with such offenders before them can reflect their sympathy by penalizing them to a lesser extent than the week-end joy-rider.

Is it the roads that are at fault, or their users? Is it generally appreciated that a fast, comfortable and efficient railway system at all levels, could do as much as any alternative suggestion to relieve the congestion on roads that were not designed to bear the load that is forced onto them today?

Now that diesel electric locomotion is ousting steam to an ever-increasing extent on medium and long distance routes, the day may yet come when England introduces a feature whose value has been proved in the New World. It is possible there for business men to book office accommodation in special sections of the train. With typing services and other facilities obtainable, the business man can work as he travels, thereby reducing the length of his working day, and lessening road traffic.

FEES FOR COMMITTAL WARRANTS

Fees chargeable in magistrates' courts are regulated by s. 112, and sch. 4, of the Magistrates' Courts Act, 1952. Under the heading "Warrant" in the schedule, there appears: "To commit after conviction or order in which the conviction or order is set forth," 2*s*.

No fees are chargeable in respect of any matter specified in part II of the schedule, and these matters are any summons, warrant notice or order issued, given or made under subs. (2) or (3) of s. 70, s. 71, s. 72, or s. 111 of the Act of 1952, or s. 11 of the Money Payments (Justices Procedure) Act, 1935, or under any rule made for the purposes of those provisions.

By s. 119 (9) of the Act of 1952, s. 117 of the Act does not apply to fees payable in the Metropolitan magistrates' courts or at either of the justice rooms of the city of London. In the former courts the fees are regulated by an order made by the Secretary of State under s. 2 (2) of the Metropolitan Police Courts Act, 1897, and under the heading "Warrant" in the order so made on October 15, 1932, there appears, "Warrant of Committal in default of payment of a fine when time has been allowed for payment," 2*s*.

It will be noticed that in the Metropolitan courts no fee is chargeable, in criminal cases, on a committal warrant unless it is issued to enforce payment of a fine when time to pay has been allowed.

We answered at 122 J.P.N. 707 a practical point in which we were asked whether a prosecutor is liable to pay the 2*s*. fee for a committal warrant which is issued to enforce payment of a fine. In answering this we overlooked that we had previously answered, at 121 J.P.N. 700, a similar question and we regret to say that our second answer contradicted our first. We have had, in consequence, further to consider this matter and we are unable to arrive at a conclusion which seems to us to be a really satisfactory one. We should like, therefore, to discuss the matter in this article and to invite comments from our readers.

We should make it clear, to begin with, that we are concerned only with criminal cases. Different considerations arise when courts are dealing with civil cases where the issues are, to a large extent, personal between the two parties. In criminal matters it is in the public interest that offences should be brought to notice and that offenders should be prosecuted. Nevertheless, when a citizen takes upon himself to do his public duty by initiating any such proceeding he is called upon to pay the appropriate fees before the court will issue process, unless the fees are remitted in pursuance of s. 113 of the Magistrates' Courts Act, 1952. It might well be argued that no one should be called upon to pay a fee for setting the law in motion in this way, but we do not wish to lengthen this article by embarking upon that question.

Once the case is brought before the court it is no part of the prosecutor's duty to concern himself with how the court deals with the defendant if he is found guilty. The prosecutor should put before the court all information which he has which may assist the court in deciding upon "sentence," but it is not for him to press the court to deal with the matter in one way or another, although there can be no objection to his calling attention to the gravity of an offence, to the prevalence of a particular type of offence and so on. The relevance of this is that with regard to the prosecutor, having done his duty by bringing the matter before the court, it would seem that his responsibility is finished and that any steps which have to be taken to enforce the court's decision are no concern of the prosecutor's.

Let us consider first the case in which a defendant is sentenced to imprisonment. The sch. 4 provision set out at the beginning of this article covers the warrant which is issued to give effect to the court's sentence, and this warrant attracts the 2*s*. fee. What does the court do if the prosecutor declares that he is not going to pay such a fee as he considers that the putting into effect of the court's sentence is the business of the court and is no concern of his? We do not think that anyone would suggest that the court should refrain from issuing the warrant. Should the court remit the fee? The wording of s. 113 (1) is "a magistrates' court may on the ground of poverty or for other reasonable cause remit in whole or in part any fee in proceedings before the court." Excluding the question of poverty it would seem either that the court would in all cases consider that there is reasonable cause to remit this particular fee or it would be unable so to find in any case. If the decision is to remit in all cases it would surely be better that the fee be abolished.

There is authority to support the statement that the fees properly payable to a justices' clerk are recoverable by

action in the county court (*see Drew* v. *Harris* (1849) 14 J.P. 26). But is anyone going seriously to suggest today that clerks to justices should sue prosecutors who decline to pay a fee of 2*s*. for the issue by magistrates' courts of warrants necessary to ensure the carrying out of the courts' decisions?

We have dealt so far with a warrant issued when the court sentences a defendant to imprisonment. We see no difference, in principle, when the court imposes a fine and a warrant has to be issued because that fine has not been paid. It is true that in some instances fines are payable, if recovered, to the prosecutor, and that such a prosecutor has a financial interest in seeing that pressure is brought to bear on a defendant to secure payment of a fine. But we consider that in such cases no less than in those far more numerous ones in which the prosecutor gets no part of the fine (other than such fees as he may have paid for the hearing) the principle should be that it is the responsibility of the court to ensure that its own decisions, in criminal cases, are carried into effect.

Unfortunately, there is no requirement which we can find which puts upon a clerk to justices any responsibility to take steps to see that his court's decisions are acted upon. Section 72 (2) of the Magistrates' Courts Act, 1952, in dealing with the effect of a transfer of fine order, provides that as from the date of such an order all functions relative to the enforcement of the payment of that fine which could have been exercised by the convicting court shall be exercisable by a "court acting for the petty sessions area specified in the order, or the clerk of that court, as the case may be, and not otherwise." This, however, cannot be interpreted as making the clerk of the second court responsible for the issue of process unless it can be shown that a like responsibility rested previously on the clerk of the convicting court.

But the matter of transferred fines raises another point of interest. We have referred to part II of sch. 4 of the Act of 1952, and this provides that no fee is payable for, *inter alia*, any warrant issued after the making of a transfer of fine order. Why should the prosecutor whose defendant lives in a place remote from the convicting court, be in a better position than the prosecutor whose defendant lives locally?

A correspondent who is interested in this question of fees has written to inform us that he understands that the Home Office, while quite properly declining to purport to determine any question of law which may be involved, have expressed the view that fees for warrants of commitment to prison after conviction, whether after sentence of imprisonment or after non-payment of a fine, are payable by the prosecutor.

On the wording of the relevant provision in sch. 4 it is difficult to dispute the theoretical correctness of this view. But we are concerned to try to give a practical answer to a question which arises in all magistrates' courts day in and day out. Our view is that it is quite impracticable to seek to enforce payment of this fee by a prosecutor who is unwilling to pay it and that there ought to be a definite obligation on a clerk to justices to take, without further fee, all steps which are necessary to carry into effect the decisions of his court. We consider that the merits of the matter should be judged by looking at the case of the individual prosecutor rather than by considering the police and other public authorities who may be prepared to pay these fees. If it is accepted that in the case of the individual prosecutor it is neither reasonable to expect, nor practicable to compel, him to pay fees becoming due after conviction, and that no clerk to justices would be justified in refraining from seeing that necessary warrants are issued because such fees had not been paid, we think that there is a strong case for abolishing all such fees in criminal cases. We should be interested to learn the views of our readers.

AFFILIATION TO THE TRADES UNION CONGRESS

By ROLAND E. SMITH, *Solicitor, President, Wanstead and Woodford Branch of NALGO*

A matter which has been constantly before the National and Local Government Officers' Association for many years has become a live issue again. Should the Association affiliate to the Trades Union Congress? The rules require that a majority of *all* the members of the Association (not simply those voting) is necessary before affiliation can be sought. A number of ballots has been held but so far the necessary majority has not been forthcoming, although the number of members in favour has steadily increased. Another ballot took place in November, 1958, and at the time of writing the result has not yet been announced. The author is going to be bold and predict a small majority in favour of affiliation (which should not be taken as an indication of his own views). I do feel however that there is a lot of misunderstanding as to the true nature, purpose and constitution of the T.U.C., and the matter when debated tends to become beclouded with irrelevant political prejudices, encouraged no doubt by the obvious sympathy of the T.U.C. with the general policies of the Labour Party as opposed to the Conservative and Liberal Parties, although it is no unique situation for the T.U.C. to be openly opposed to the Labour Party on particular issues, *e.g.*, on the merits of further nationalization schemes. The purpose of my article is therefore to try and give an unbiassed factual picture, and a brief summary of the usual arguments advanced for and against affiliation.

What is the T.U.C.? It is a Congress whose primary objects are to promote the interests of its affiliated organizations, and to improve the economic and social conditions of the workers, and to consider on their merits the broad issues of national policy so far as they concern the whole trade union movement. One hundred and eighty-four unions are affiliated to the T.U.C., comprising nearly nine million members. The T.U.C. is a deliberative body. It has limited executive functions and very little power to commit affiliated unions to any action. Its resolutions are not legally binding upon the unions which are completely autonomous. Yet it wields tremendous influence in the whole field of labour relations. Its executive functions are performed by a general council elected annually by the Congress. The function of the general council is to represent the trade union movement as a whole and co-ordinate the action of its affiliated unions. It enters into consultation with the Government, employers' organizations, and other bodies. Readers will recall the prominent part the T.U.C. played in the London bus strike in May, 1958. It undertakes educational, research, and propaganda work for the movement as a whole. It reports annually to Congress which gives it guidance and directives in the form of resolutions. It must be stressed however that, although the T.U.C. has certain disciplinary and executive powers, affiliated unions remain autonomous and retain full responsibility for their own members. The

only big unions not affiliated are NALGO and the National Union of Teachers; there are also some smaller unions of civil servants. The Labour Party and the T.U.C. are entirely independent organizations and each formulates its own policy, but perhaps after internal consultation. The similarities between the T.U.C. and the Labour Party arise from the support given to the Labour Party by individual unions and trade unionists.

The Place of the T.U.C. in the Modern State

The T.U.C. has established its right to be consulted on all government Bills, regulations, and other action likely to have an effect on the workers and their organizations. Likewise in the opposite direction, the T.U.C. has established the right to approach the Prime Minister, Minister of Labour, or other government spokesmen on labour problems. It is represented on many government sponsored bodies dealing with labour relations, and on many international bodies of high status. One of the most important of these is probably the National Joint Advisory Council to the Minister of Labour. The employee representative on industrial courts and arbitration tribunals is invariably nominated by the T.U.C.

The T.U.C. and the Labour Party

At the T.U. Congress of 1899 the Amalgamated Society of Railway Servants moved a resolution which led to the foundation of the Labour Party. By 546,000 to 434,000 votes it instructed the general council to convene a meeting of interested parties to devise ways and means of securing an increased number of Labour members in Parliament. The meeting took place in 1900 in London. Out of the meeting grew a Labour Representation Committee. Initially no one was quite certain of the exact relationship between the two bodies, but the situation was clarified in 1904 when Richard Bell, president of the T.U.C., and (incidentally) a Liberal member of Parliament ruled that the delegates could not discuss the affairs of the Labour Representation Committee as it was a separate, independent organization. The L.R.C. later grew into the Labour Party. Party liaison between the T.U.C. and the Labour Party is provided by a non-policy making body known as the National Council of Labour, consisting of members drawn from both sides and from the Co-operative Union. The T.U.C. is not affiliated to the Labour Party and does not have a political fund. Individual trade unions cannot use their ordinary funds for political purposes but can by ballot set up a separate fund financed by a separate levy which any member can contract out of paying. About 80 trade union organizations have a political fund, and all except one use it in support of the Labour Party. Trade unions in fact provide about three-quarters of the Labour Party's income. However, not all who pay the political levy are supporters of the Labour Party. Some pay to get a "voice" in political affairs.

The T.U.C. and the Conservative Party

The Conservative Party claims to have the support of three million trade unionists and to have organized trade union advisory councils in many constituencies. These advisory councils may be represented on the executive committee of the constituency party. At area and national level this pattern is repeated. The party's approach to this subject is governed by certain fundamental principles, namely: (*a*) trade unionists are not to be segregated into separate organizations, (*b*) the legitimate function of the T.U.C. or of trade unions is not to be undermined, (*c*) there is a distinction between a Conservative trade unionist's responsibilities to his trade union and to the party. It does not discourage a member from freely belonging to a trade union and indeed encourages them to do so, but the party seeks to free trade unions from what it regards as political domination by the Labour Party.

The Civil Service

One of the main reasons which has prompted NALGO hitherto not to affiliate to the T.U.C. is that its members are the paid servants of local councils, a good majority of which today are politically controlled by one or other of the great political parties, and as the political constitution of a council may vary from election to election local government officers should be above any attachment to one party or another. Such an argument should apply equally to civil servants who serve political Ministers of the Crown. But in fact civil service unions form one of the sections of the T.U.C. which have their own representatives on the T.U.C.'s General Council. The following civil service trade unions are affiliated: Civil Service Clerical Association; Civil Service Union; Inland Revenue Staff Federation; Ministry of Labour Staff Association; Association of Post Office Controlling Officers; Post Office Engineering Union; Union of Post Office Workers and Society of Technical Civil Servants. Only one of these, the Union of Post Office Workers, is also affiliated to the Labour Party.

The Case for Affiliation

NALGO is a trade union and as such should take its proper place in the trade union movement. The Government recognize the T.U.C. as the representative of organized labour, and this has been shown to be equally true of a Conservative as of a Labour government. Affiliation does not imply support for any political party. Indeed it would be illegal to spend money for political purposes without creating a special political fund. The London County Council Staff Association has affiliated without any repercussions. The T.U.C. is a very powerful and influential organization consulted by the government on every matter affecting labour relations. Its members serve on important committees and tribunals and their services have been recognized by elevation to the peerage, and other awards or distinctions.

The Case Against Affiliation

NALGO has built up a vast organization without support from the T.U.C. Why affiliate now? Employers on local authorities may take widely different, if perhaps prejudiced, views on such a step—to the detriment of local government officers. It may bring discord and bad feeling into the present fairly happy relationships existing between NALGO and the employers' sides of National and Provincial Joint Councils. Although there is no formal connexion between the T.U.C. and the Labour Party, the two bodies are in the eyes of the "man in the street" very closely linked and identified, and the "man in the street" may resent the town hall staff being similarly identified. NALGO themselves are acutely divided on the issue. The split may be deepened if affiliation is accepted—to the detriment of all members. The cost of affiliation will be nearly £10,000 a year, *i.e.*, 9*d.* a member. The T.U.C. is dominated by manual workers, and NALGO will be in a sad minority, if affiliated.

So the arguments for and against rage. By the time this

article is printed the result of the ballot may be known. NALGO members should have voted one way or the other, for there is no excuse for abstaining on an issue like this. Although the advocates of affiliation may secure a narrow vote in their favour, it may not be enough to obtain a majority of the membership, which is essential under the Association's rules.

N.B.—The result of the ballot was as follows:

For affiliation	...	82,618
Against	... ...	108,615

LOCAL GOVERNMENT PRACTICES—OR CONVENTIONS ?

By RAYMOND S. B. KNOWLES, D.P.A., A.C.I.S., A.C.C.S., L.A.M.T.P.I.

Are there real conventions in local government ? Any, that is, of sufficient significance to be recognized universally as characteristic features regulating the practical working of local authorities ?

A recent issue of *Public Administration* contains the first part of an article in which the authors, Mr. Henry Maddick and Mr. E. P. Pritchard, discuss what they regard as conventions: "the informal practices" which distinguish the working of eight unspecified county borough councils in the West Midlands. The article is based on a study by the Extra-Mural Studies Department of Birmingham University.

Rather surprisingly the "conventions" so selected for discussion relate to the varying practices of those eight local authorities in delegating or not delegating executive powers to their committees, the methods adopted to secure co-ordination, the practical steps pursued in policy making, the working of the party system, and the extent to which and the manner in which public relations is undertaken.

All these are admittedly important and worthwhile topics for examination. But have any of them the qualities and dignity of conventions ?

There is, as the authors of the article in *Public Administration*, point out, far too little known about the detailed practices of local authorities in this country. There are several reasons why this is so. And many good reasons why there ought to be research into their effect and importance.

But administrative practices of this kind do not seem to be those which are truly conventional in the way that conventions are understood in British central government. Professor W. J. M. Mackenzie, in an earlier article in *Public Administration* on the subject, gave a much wider meaning to the term as applied to local government than Birmingham's University Department of Extra-Mural Studies finds acceptable. But is it so difficult to agree upon a satisfactory definition ?

Whether a local authority in fact delegates widely or somewhat grudgingly and therefore narrowly, or indeed does not delegate anything at all to committees, is surely not properly a matter of local government convention. The law empowers a local authority to delegate if it so desires. The action taken by an individual authority in this respect is merely a matter of local policy. It is interesting and instructive to know why some authorities so delegate and others do not, and there is much to learn from an examination of the administrative machinery through which delegation arrangements work. But these varying practices are not that which ought to be distinguished as "conventions."

Mr. Maddick and Mr. Pritchard—or perhaps more accurately the research groups whose activities they are reporting—are on more solid ground, it is suggested, when they say they found that even where there was no delegation to committees it was apparent that committees often acted in matters which had become recognized as within their competence. This does possess the qualities of convention. Is there in fact an identifiable category of executive action which is generally regarded throughout local government as being inherently a committee power, assumed automatically by every local authority committee whenever and for whatever purpose appointed ?

The writer is not prepared to say that there is. But if research into the point revealed that there were well-recognized spheres of activity of this sort then that, surely, would truly be a local government convention.

In other words there ought to be a distinction between "practices" which differ widely between local authorities and those "conventions" which are fully recognized and followed unswervingly by all local authorities. The first, as has been said, merit greater attention than they have up to now received, but it is important to recognize that they are local practices not characteristic of local administration as a whole. An example of how misleading this can otherwise be is in Mr. W. Eric Jackson's treatise on *The Secretarial Practice of Local Authorities*, in which he refers to a practice of preserving with the same sanctity as minutes all reports, plans, letters, and other documents submitted to a committee: these "presented papers," Mr. Jackson advises, should be bound separately or otherwise preserved in such a manner that they can always be produced and identified without question as the documents to which the minute refers. Mr. Jackson fails to say, however, that the practice is largely peculiar to the London county council. It is not one universally adopted, by any means.

Of conventions pure and simple there must be relatively few. And understandably so, because the law regulates the practices of local authorities to an unflatteringly minute degree and in a far from workmanlike way.

Perhaps the most important of the true conventions is that whereby the chairman of a committee—in law indistinguishable from his fellow councillors or aldermen, and possessing no special powers other than those which by statute or common law may reside in him as chairman of a meeting—will authorize action on his committee's behalf in circumstances of urgency. The limitations upon a committee chairman's conventional power in this respect and the extent to which he may be called upon to exercise it differ from one authority to another. Where there is wide delegation to committees the chairman's power can be extensive; in other cases the taking of "chairman's action" is exceptional. But the practice of seeking the authority of a committee chairman is universal and has surely mellowed into an acceptable convention.

It is impossible here to dwell more lengthily upon the point. There are conventions large and small. Among the smaller is one of meeting procedure.

All local authorities, whether or not they delegate powers to committees, require committees to submit some report upon their proceedings to the full council. The form which that report takes is a matter of practice, not convention, for there are many differences. But all authorities adopt substantially the same expedient for getting the committees' proceedings actually before the council meeting for discussion. The motion is invariably "*That the report be received.*"

It is a motion which is not intended to be debated: it is never adopted or rejected or indeed ever voted upon. It is a procedural motion only. It may or may not be regulated by standing orders. But whatever the circumstances it is, surely, a convention of local government.

LOCAL CONTROL OF EDUCATION AND THE DIVISIONAL EXECUTIVES

By R. E. C. JEWELL

Sir Edward Boyle, Parliamentary Secretary to the Ministry of Education, visited the twelfth annual conference of the National Association of Divisional Executives on September 24, 1958. He said: "There is surprisingly little difference on paper between the various schemes, especially between those of excepted districts, but divisional administration works much better in some areas than in others. The human factor is the most important element in making it work well or badly. Co-operation depends upon trust between the two parties, and both parties must contribute. One way is for committee members and officers—and not only chief officers—to get to know each other as persons. If people normally communicated with each other only by letter or telephone or if, when they did meet, it was infrequently and on formal occasions, it could be easy for suspicion and misunderstanding to develop. Opportunities for direct and informal contact were therefore most valuable. Our information at the Ministry suggests that the practice followed in some large counties, of the chief education officers having a monthly meeting with all the education officers of excepted districts and ordinary executives, can pay very big dividends, as does the arrangement whereby each executive in a county nominates a co-opted member of the county education committee. Members and officers of some county councils feel that divisional executives had rebuffed their overtures. This is particularly so in excepted districts; they are determined, they say, to keep to themselves. If divisional executives run away from the realities of the situation and will not face the fact that there must be some limit to their freedom of decision and action, then friction is bound to develop. If, for example, an excepted district still hankers after the independence it had for elementary education until 1945 it is going to make the county feel that it is burying its head in the sand, and co-operation is bound to become difficult. Similarly, divisional executives must be realistic about what they can expect in terms of new schools, new equipment and more teachers. By all means let each divisional executive put in for its fair share, but if it habitually demands these greatly in excess of its fair share of the resources available, a county is very likely to become impatient and to become tempted to pay little attention to its demands even when they are moderate."

It will be recalled that last year it looked as though the divisional executives might be abolished but the Local Government Act, 1958, specifically retains them.

For historical reasons some excepted districts (*i.e.*, where the council of the borough or urban district is the divisional executive) still find the overall control exercised by the county councils rather irksome. In this connexion, reference was made at the conference to "the administrative restrictions encountered in so many forms throughout the country." Complaints were also voiced to the effect that the establishment of divisional executives had been left to the option of county councils, without guidance about the form and extent of the powers to be delegated. Excepted districts were, of course, part III authorities for elementary education under the Education Act, 1902, and therefore the authorities concerned felt keenly the abolition of elementary education as such, and its replacement by primary and secondary education to be administered by the new local education authorities. Divisional executives consist of representatives of the local education authority, persons nominated by the county district councils whose districts are situated wholly or partly within the divisional area, and persons co-opted because they have special experience in education or knowledge of the local needs of the population. They thus occupy a position midway between the local education authority (the county council) on the one hand and the governors and managers of secondary and primary schools on the other hand. Local education authorities were empowered under the Education Act, 1944, to submit schemes of divisional administration to the Minister for his approval. Teachers are strongly represented on some executives and the co-opted members serve a very useful purpose, since they can often devote more time to the work of the executives than the elected members who serve on numerous other committees.

In a recent article in *Public Administration*,* divisional executives were described as "glorified area sub-committees of county education committees." The point is also made by Mr. Richards that the executives are *ad hoc* bodies, not directly elected; they therefore stand apart from the tradition of modern local government. The various pressures for the abolition of the divisional executives have so far been successfully resisted. It may well be, however, that some may disappear or at any rate be subject to boundary adjustments when the Local Government Commissions to be established under the Local Government Act, 1958, begin their work. Some excepted districts with a school population greater than that of some county boroughs naturally find direction from the county councils irksome. The Commissions will have much scope in this field, as in others, to seek a more realistic and practical arrangement of areas and boundaries. The tendency should be towards the creation of smaller units of administration.

Sir Edward Boyle's remarks were reinforced on the next day of the conference by Mr. J. L. Longland, director of education for Derbyshire. Mr. Longland said: "If efficiency

*Autumn, 1958. Delegation in Local Government—Recent developments, by Peter G. Richards.

is the main criterion, who in their senses would have dreamed up the local government machine, with its councils and committees and sub-committees and divisional executives and managers and governors and all? The city of Chicago, with four million inhabitants, runs its educational system with a board of education of seven members meeting just over 12 times a year, and hotly denies that the result is in any way undemocratic. In contrast a colleague of mine has done some sums about his own county of 600,000, and has added up 800 people sitting out 2,500 committee meetings a year, fed by 80,000 foolscap sheets of paper. In finance, we are the grocer's shop which has grown up to be Unilever but still tries to run its enormous business as if it were the grocer's shop, waiting for reports, committees, and divisions before the managing director spends £50. The system works because the link between the lay and professional administrator is a personal relationship. If it were not, nothing good would come of it."

It is possible that the personal relationships which have been so carefully fostered during the last decade may be jeopardized by a too drastic recasting of local government boundaries by the Commissioners. This is an added reason for the desirability of smaller, rather than larger, units of divisional administration. Education is a very personal service and it can indeed be claimed that it is the local government function most vitally affecting the welfare and happiness of the people. The delegation of certain aspects of education administration to fairly small units is therefore a desirable aim in itself and this tendency, rather than its opposite, should be encouraged. Whilst the offices of the county council may deal adequately with such matters as highways and bridges the consensus of informed opinion is that the ordinary citizen prefers to discuss the education of his children in a small local office with committee members or administrators who know the area well, having an intimate knowledge of its problems and special characteristics. It should be borne in mind that the recommendations of the Local Government Commissioners will not necessarily immediately affect the composition of divisional executives. Once the mergers, amalgamations, etc., of local government units have been effected, it will then be for the counties to consider the preparation of amended schemes of divisional administration in the light of general adjustments in boundaries. The Commissioners' recommendations will have to be sanctioned by the Minister of Housing and Local Government, and the counties' revised schemes of divisional administration would have to be approved by the Minister of Education.

It is important to appreciate the distinction between the ordinary divisional executives, which exercise delegated functions in the areas of combinations of several small local government units, and excepted districts, which are a special type of divisional executive. As we have already seen, the latter feel more keenly the supervision exercised by the main local education authorities, the county councils, for historical reasons. The excepted districts are self-contained units based on individual local authorities and they have excellent traditions in local education administration. Moreover, excepted districts can exercise delegated functions in the sphere of further education, as well as being responsible for primary and secondary education in their areas. In view of the urgent national need for training more scientists and technologists it is obvious that the excepted districts have an important part to play in the struggle for national survival in this field. Their high traditions, experienced committee members, and able administrative officers make the excepted districts, as at present constituted, an ideal vehicle for educational advance. It is therefore to be hoped that the recommendations of the Local Government Commissioners and of county councils for boundary changes and adjustments will disturb the excepted districts as little as possible. Before the Education Act, 1944, came into force education officers of the old part III authorities ranked as chief officers, but this is no longer the case in excepted districts. Nevertheless the latter are still served by officers of considerable experience and ability, and the high standards of the older authorities have been successfully perpetuated in their successors.

In conclusion it is submitted that on the whole divisional executives perform a useful function in the local control of education. With regard to Mr. Longland's criticisms it may be conceded that perhaps there are too many sub-committees of the main local education authorities, whilst the superimposition of governors and managers does tend to make educational administration rather top heavy. However, governors and managers of schools are now firmly entrenched and it would be politically difficult to abolish them, since they are recruited from the political parties at local level. The better solution would be to seek governors and managers of a higher calibre. This reform could come either from the political parties themselves or by making a smaller proportion of purely political appointments. Thus there could be an extension of the principle of university representation and representatives of other special interests could be invited to serve as governors and managers. At present there is only one university representative on each governing body of a county secondary school, and none on the managing bodies of county primary schools. Mr. Henry Brooke, the Minister of Housing and Local Government, has said that the aim of the Government is to make local government more truly local. The retention of divisional executives coupled with the review of areas by the Local Government Commissions and by the counties should help the Minister's stated purpose as far as education is concerned. On the other hand the arrangements for implementing the new block grant under the Local Government Act, 1958, may militate against it. One can but hope that the fears of the Association of Education Committees and of others interested in education, that not enough of the block grant will be allocated to education by individual authorities, will be proved groundless. It would be a pity if the expected beneficial results of past and future delegation schemes were to be nullified by unnecessary financial restrictions.

ADDITIONS TO COMMISSIONS

HEREFORD COUNTY

Mrs. Nancy Catherine Bellville, Tedstone Court, Tedstone Wafre, Bromyard.

James Harold William Davies, Castle Farm, Eardisley.

Mrs. Gweneth Douglass, Old Vicarage, Titley.

Clarence John Gooding, 37 Scudamore Street, Hereford.

Mrs. Dorothy Betty Talbot Malleson, Crowmore, Tillington, Hereford.

Mrs. Patricia Mary Sumner, Southmead, Southend, Ledbury.

William Sutton, 19 Gresleys Estate, Ross-on-Wye.

Arthur Richard Charles Turner, The Lair, Upperfields, Ledbury.

Mrs. Gwendolene Mary Kemp, Charrington, Ross-on-Wye.

WEST BROMWICH BOROUGH

Eric Samuel Bradbury, 23 Hall Green Road, West Bromwich.

John Rudolph Cotterill, 36 Charlemont Avenue, West Bromwich.

Harry Rostron, 32 Brackendale Drive, Yew Tree, West Bromwich.

Kenneth Edmund Shenton, Engledowne, 63 Church Vale, West Bromwich.

ANNUAL REPORTS, ETC.

LEEDS PROBATION REPORT

This report shows that 380 probation orders were made by the city courts during the year ended December 31, last, six being at Leeds Assizes and 79 at quarter sessions. So we see at once that the words of the principal probation officer, Mr. A. G. Appleyard, in his introduction, claiming a continuance of confidence in the Leeds probation service on the part of H.M. Judges is fully borne out. Before long, it is to be hoped that some student qualified in these matters, will attempt a national survey on the increased use of probation by the senior courts; the result would almost certainly be very interesting.

In the analysis of new orders which the report gives us with great clarity, it is interesting to observe the wide range of offences now considered suitable, in appropriate personal circumstances, for probation. Thus we find a probation order made for manslaughter, three for carnal knowledge, 23 for indecent assault and gross indecency, and 35 for forgery and false pretences and so on. All this represents a far-reaching development; the time is not long past at which such a state of affairs would have been unthinkable.

It is a relief to find that there is no marked increase in juvenile crime in Leeds, but a word of warning is given about the next two or three years, which will take the 10–11 year age group "bulge" into adolescence: it is almost certain that the juvenile courts have not yet seen the peak of their activity.

As regards staffing difficulties, the report does not advocate a resort to untrained personnel, and this is surely a right view. It would make nonsense of so important a social service if the training schemes and senior courses used so lavishly in the case of established officers, were considered so far unnecessary for the effective discharge of probation officers' duties, that new appointments could be made regardless of adequate previous training.

There are three approved hostels within the city of Leeds, and this results in 198 cases falling to the supervision of local officers in which convictions took place at outside courts. This in itself places an extra burden on the Leeds staff, not only as regards the endless day-to-day problems of keeping in touch with hostel wardens and their charges, but also as regards the finding of work for this considerable "foreign" intake. The report comments on the fact that a large proportion of the hostel residents are homeless, a circumstance which increases instability and insecurity. It is quite clear that the Leeds probation officers and the hostel wardens who work in co-operation with them have their hands full. It is equally clear that they are more than equal to the tasks presented to them.

ISLE OF WIGHT R.D.C. ACCOUNTS, 1957–58

The accounts presented by the treasurer and chief financial officer, Mr. C. H. Miller, show that a general rate of 17*s.* was levied for the year, 14*s.* 9*d.* of which was required to meet the county council precept. The penny rate produced £880 and the general district fund surplus at the year end was £9,800, a reduction of £800 from the previous year.

The authority provides services for 17,600 people.

Seven hundred and twelve dwellings have been built: there was a surplus of £6,800 on the housing revenue account at March 31, 1958. Mr. Miller says "For the second successive year there is no charge upon the ratepayers in respect of council houses nor does it seem likely that such a charge will arise in the foreseeable future." Repairs fund contributions are being increased from £8 to £10 a house in 1958–59.

The heaviest charge to the ratepayers was for sewerage and sewage disposal: this cost £12,250.

Loan debt is £1¼ million: the rate of increase slowed down in 1957–58 with the vastly reduced housing programme.

KINGSTON-UPON-HULL CHILDREN'S COMMITTEE

In his eighth annual report, Mr. Henry Norris, children's officer for Kingston-upon-Hull, refers to the difficulty in arranging suitable accommodation for children received into care—a trouble that has become more acute in the past year in spite of the fact that rather fewer children were involved. It appears that the real trouble lies in the disposal of "long-stay" chidren. It is obviously desirable that these should be subject to stable and cheerful conditions, but it seems that many of them have to be accommodated in places originally earmarked for "short-stay" children.

The report comments very wisely on the unwisdom of children who are intended for a long stay witnessing constant comings and goings of others of whose actual circumstances they are, of course, unaware. Steps are being taken to establish a "small group" home to cater with the difficult long term cases. This is clearly a desirable end, and we are sure that other authorities will be interested in the working out of the scheme.

It appears from further passages in the report that, no matter how kindly the work of the child care officers, children in care would rather exchange drab surroundings in the company of a parent for any degree of luxury in other circumstances. Seeing that, in the nature of things, a great many of these unfortunate children have to be separated from their parents, it is clearly the first part of a children's officer's qualifications that he should have the ready understanding and imaginative sympathy of the best type of parent.

This is a tall order indeed. The Children Act of 1948 has now run its first decade. The new and extensive social service which it created has taken shape all over the country. How far it has met the needs it was intended to answer is a matter which might be the subject of a dispassionate inquiry, held by people who know what to look for, and embracing the country as a whole. This report shows, as did last year's, that this particular authority is imaginative and sympathetic. It is perhaps time that the problems which children's committees meet all over the country were collated, and a scheme devised for the passing on of valuable experience from one authority to another.

THE NUFFIELD FOUNDATION

In March, 1958, the Nuffield Foundation completed the fifteenth year of its existence. During this period the Foundation has given away nearly £8¼ million. Approximately £6¼ million has been spent on ventures within the United Kingdom and £2 million in the advanced and advancing parts of the oversea Commonwealth. A broad classification of the grants made so far shows that about £1¾ million has been in the field of science and technology, approximately £1¼ million in the field of medicine, over £1 million on the care of old people and research in ageing; and about £1¼ million on social research and experiment and education.

The thirteenth report, which relates to the year ended March 31, 1958, places rather more emphasis than usual on the Foundation's interest in ventures designed to discover the facts relevant to human behaviour and relationships. During the year grants allocated and appropriated amounted to £850,000. The report explains in detail the ways in which grants have been made in the United Kingdom in connexion with science and technology; medicine; social research and experiment and education; and in the care of old people and research in ageing. An account is also given of the grants made for the Commonwealth oversea. In the realm of science an interesting type of research which is being helped is into the cause and treatment of mental deficiency. This is being undertaken at the Galton laboratory of University College, London.

Amongst the grants in connexion with social research is one to the department of architecture, University of Edinburgh, for research into domestic housing. During the past 25 years there has been little significant advance in the technique of planning individual dwellings or of grouping dwellings in relation to one another. The active housing agencies, however enlightened, are so heavily committed to the day-to-day problems of production that they have little opportunity for objective study and analysis. It is felt, therefore that it would be useful to undertake two "live" experiments in the planning of individual dwellings in their grouping. This will be done with a rural group in East Lothian and a high-density housing group in a new town. A grant has also been made to the faculty of social studies, Oxford, for a study of a new rural housing estate near Oxford.

Grants have been made for several projects which are of special interest to educationalists. One is towards the teaching of school children at the London zoo. Two others relate to work for backward children. Attention is drawn to the fact that apart from the educationally subnormal, between five and 6½ *per cent.* of the young men of military age and a somewhat lower percentage of young girls are less than literate. Many investigations have shown that inability to read with sufficient fluency is numbered high among the causes of industrial inefficiency and that it is at least a contributory cause of social maladjustment and delinquency. The Foundation considers that there is reason to believe that the amount of illiteracy can be cut down to very small proportions by good teachers if they have suitable reading material. A grant has therefore been made to the National Book League to help in an investigation as to what reading material is

suitable for backward readers and why. Another grant in this field is to the guild of teachers of backward children towards the cost of their journal. Helping deaf boys and girls to lead normal lives is being supported by a grant to the department of education of the deaf in the University of Manchester.

The main help given by the Foundation in connexion with the welfare of old people is through the National Corporation for the Care of Old People. Help is, however, being given by the Foundation directly for various forms of research in ageing. As explained in the report, happiness in later life depends very much on the attitudes and skills established earlier. Education for leisure, therefore has a special significance for the elderly and retired. The Foundation has accordingly offered a grant to the National Institute for adult education for a research project aimed at collecting comprehensive information on the existing educational facilities available to the elderly; on the use made of them; and on the general rôle played by adult education in helping people to adjust themselves to retirement, and to continue leading an active life.

The economic position of the elderly is the subject of another type of research which is being helped by the Foundation. This is being undertaken by the department of applied economics, University of Cambridge. The aim is to obtain a detailed picture of the economic circumstances of people over retirement age in Britain. In addition to its main purpose, the material collected will be used for a further investigation of the life cycle of income and expenditure and for a study of the methodology of budget surveys.

CITY OF SHEFFIELD: CHIEF CONSTABLE'S REPORT FOR 1957

The report includes this paragraph "The cadet scheme offers an exceptional opportunity to young men who wish to make the police service their career. It is proving a satisfactory source of recruitment to the regular force." It is, unfortunately, the only satisfactory aspect of recruiting in Sheffield. The net increase during 1957 was only three, giving an actual strength of 657 men, the authorized establishment being 764. The women, at 36, were at full strength. The chief factor affecting wastage is still the resignation of young men before they have qualified for pension. Of the 24 cadets appointed since the scheme started who are qualified by age to be regular constables 18 have joined the force.

The total of recorded crimes was 4,973, 543 more than in 1956, and 2,653 of them were detected. Juveniles were responsible for 981 of these, but charges were preferred in respect of only 635, involving 338 juveniles. Three hundred and twenty-one other juveniles were cautioned by a senior police officer.

It is interesting to have figures about the working of the procedure under the Magistrates' Courts Act, 1957. In November and December in Sheffield 702 defendants had the opportunity to plead by post and 553 of them wrote pleading guilty. The result was a considerable overall saving of police time in spite of the obvious increase in clerical work involved.

CARDIFF FINANCES, 1957–58

A capital city has special obligations of hospitality to the distinguished visitors it receives. It is a duty gladly done and all the better, perhaps, for not being, metaphorically speaking, such a casting of bread upon the waters as occurs in the seaside resorts. A penny rate in the capital city of Cardiff produced in 1957–58 £15,400, and two-thirds of this amount was sufficient to cover the cost of civic receptions. The Lord Mayor, his secretariat, motor-car and mansion house cost almost another penny rate. These are modest sums and they compare favourably with the emoluments of directors of concerns with much smaller turnovers than Cardiff's £10,000,000, and whose activities cannot rank, either in variety or importance, with those of the corporation.

In his well-produced and compact abstract of accounts, Mr. R. L. Davies, F.I.M.T.A., city treasurer and controller, indicates the far-reaching scope of the work done by the city council and its staff: the reader will find much of interest in his pages.

We refer here only to the housing position—of special interest in Cardiff. The corporation own close on 17,000 houses. The average weekly rent is £1 4*s.* and there were rent arrears at the year end of £217,000. A large part of these consist of differential rents arrears assessments: that scheme was superseded by a rent rebate scheme on July 1, 1957. Mr. Davies estimates that the present surplus of £423,000 on the housing revenue account will now decline and will disappear completely by 1962.

House mortgage advances continued at a high level: 1,200 were made during the year, totalling £1,100,000. Since the scheme started £6,600,000 has been advanced, and the latest Government proposals will probably mean another increase in activity.

KENT WEIGHTS AND MEASURES DEPARTMENT

Mr. S. Strugnell, chief inspector of weights and measures to Kent county council in his annual report gives a not unsatisfactory picture of traders and their methods, but there are certainly some exceptions, and there is a need for some tightening of the law in some respects. House wives are familiar with the tin of fruit that contains too much liquid and not enough fruit, and Mr. Strugnell advocates the requirement of a statement of the quantities of each. The British canning industry has applied its own voluntary code of practice to the canning of fruit and vegetables. This code not only fixes the weight of fruit and vegetables to be put into the various sized cans but allows for inspectors of weights and measures to enter the canning factories at any time to check the weight of the contents of cans before any fluid is added. He quotes an instance in which two tins of strawberries presumably not British canned sold at the same price, contained in the one case 7¼ *ozs.* of fruit and 6¼ *ozs.* of liquid, and in the other five *ozs.* of fruit and 10¼ *ozs.* of liquid.

This report suggests the desirability of a requirement that prepacked foods should in general be sold in certain specified weights or measures, on the same lines as apply to most sales of bread. This would make it more difficult to mask a price increase by a reduction in weight or measure. How the public may be deceived by the size of a packet is illustrated by the case of a carton, not in this instance used for food, 4¼ *in.* high with the ends so made that when tucked in they form a cavity at each end which reduces the interior dimension from 4¼ *in.* to 2¼ *in.* As there seemed no need for this unused space, the packers were asked for their reasons. They stated that the one *in.* gaps at each end of the carton were mainly for protection of the contents against damage. Apparently, Mr. Strugnell observes dryly, similar protection is not necessary at the front, back and sides of the carton.

The report states that the honesty of practically every coal dealer in the county is unquestioned while the honesty of some of their employees is doubtful to say the least. Proceedings are now being taken against the driver and his mate for short weight coal, although it is emphasised that the seller must not disregard his responsibility to take precautions.

BURNLEY R.D.C. ACCOUNTS, 1957–58

Many local authorities now produce in their own offices concise stencilled abstracts of their accounts. The rural districts are much to the fore in this useful and economical procedure: Mr. D. Cowgill, A.I.M.T.A., chief financial officer of the Burnley R.D.C., has presented the accounts of his authority in this way and his publication is among the best we have seen.

Burnley has a population of 16,260, a penny rate of £763 and a rate poundage of 16*s.* 3*d.* In past years its rates have been consistently below the average rate levied by 100 rural district councils included in the I.M.T.A. Return of Rates Levied.

Rate arrears other than in respect of outstanding appeals amounted to only £88. There was a sum of £7,087 withheld by appealing ratepayers—a figure which emphasises the necessity of speeding up the settlement of these long outstanding cases.

Housing is of great interest to all rural authorities. In Burnley the year closed with a surplus of £505, but only after crediting a rate contribution of £1,110. The authority owns 186 houses: from April 1, 1958, revised rents are being charged based on gross values for rating.

The especial difficulties of a mining area are underlined by the item of £750 for repair to subsidence damage charged in the first instance to the housing repairs fund account.

Loan debt at March 31 totalled £340,000 (housing £273,000) and average rate of interest paid was 3.74 *per cent.*

General rate fund balance increased to £27,600, but Mr. Cowgill points out that £8,000 is earmarked for increased payments to Burnley county borough for sewage treatment.

MONMOUTHSHIRE: CHIEF CONSTABLE'S REPORT FOR 1957

Some improvement in recruiting enabled this force to reach, by the end of the year, an actual strength of 409, only one less than its previous authorized establishment, 410. But in November this latter figure was increased by 14, leaving 15 vacancies at the end of 1957. The improved position has enabled leave to be granted on all rest days, thus doing away with the need for payment in lieu. The net increase in strength during the year was eight.

The county had an increase of crime, as had so many other areas in the country, and the total of recorded crimes was 4,604, with 2,510 detected. The 1956 total was 4,230.

During the period of the Suez crisis the number of accidents was 168 fewer than in the corresponding period in 1956, but the year's total showed an overall increase of 100; in other words there were, in 1957, 268 more accidents from May onwards than in those months

in 1956. Cameras are carried on police vehicles, and photographs taken by the crews have been used at inquests and in the courts. During the year 172 incidents were photographed in this way.

Comment is made, in recording that there were 1,433 abnormal loads during the year, on the tendency for such loads to become longer, wider and higher. The greatest difficulty is encountered in finding suitable routes for these lumbering obstructions.

The force does its best to avoid unnecessary prosecutions for minor infringements of the law. As many as 7,413 persons were given " on the spot advice " when their conduct was likely to prove dangerous to themselves or to others.

THE WEEK IN PARLIAMENT

By J. W. Murray, our Lobby Correspondent

FLOGGING

At question time in the Commons, Mr. C. Osborne (Louth) asked the Secretary of State for the Home Department if, in view of the public disquiet over recent bank robberies, wage-snatchings and attacks on defenceless women, the Government would take steps immediately to reintroduce flogging for all crimes of violence.

The Secretary of State for the Home Department, Mr. R. A. Butler, replied that the evidence did not support the view that when flogging was available for certain crimes, which did not include all crimes of violence, it had the especially effective influence as a deterrent which was now frequently attributed to it. Indeed, after the abolition of flogging, crimes for which it had been intended to be a sanction declined.

Asked to what height the crime wave would have to go before he would reintroduce flogging, Mr. Butler said he was not prepared to answer hypothetical questions on the matter.

Mr. Anthony Greenwood (Rossendale) asked the Home Secretary to re-emphasize that within living memory flogging had never been the penalty for all crimes of violence.

Mr. Butler replied that it was limited severely before 1948. It was more general about 100 years ago, but thereafter it was limited to a few particular crimes, mainly those under s. 23 (1) of the Larceny Act, 1916.

Dame Florence Horsbrugh (Moss Side) said there was growing anxiety in the country about these crimes. Would the Home Secretary consider what action should be taken ?

Mr. Butler replied that he had already stated that he proposed in due course to announce his intentions in the matter.

PROBATION OFFICERS

Mr. W. R. Sorensen (Leyton) asked the Secretary of State, in view of the report of prison after-care and the estimate that nearly 500 extra probation officers would be required to implement the proposals, and in view of the fact that justices were making a diminished use of probation because of the present limited number of trained probation officers, what action was being taken to expand the present number of 1,373 probation officers to meet the implicit need.

The Under-Secretary of State for the Home Department, Mr. David Renton, replied that the Advisory Council on the Treatment of Offenders estimated that to implement its recent recommendations on after-care would require 32 extra probation officers in the first instance and another 36 at a later stage. More probation orders were made in 1957 than in any previous year and the number of trained probation officers in the service was now higher than ever before. The efforts being made to increase recruitment to training for probation work were meeting with a fair measure of success.

In reply to a supplementary question, he said that the number of officers in the metropolitan magistrates' courts area would inevitably increase as a result of recruitment.

SUICIDE AND ATTEMPTED SUICIDE

Mr. K. Robinson (St. Pancras, N.) and Sir F. Medlicott (Norfolk, C.) asked the Secretary of State if he was now in a position to announce the Government's intentions with regard to the law relating to suicide and attempted suicide.

Mr. Butler replied that the problem was under active consideration, but he was not yet in a position to make a statement about it.

In reply to a supplementary question, Mr. Butler said that he was in consultation with the Minister of Health and the Secretary of State for Scotland. He had already sought the views of the British Medical Association and the Magistrates' Association, because it was important that he should be sure of all their views. A discussion was going on within the Government and with outside bodies as to the best course to adopt, and until he had concluded that, he would rather not reach a decision.

LAW OF LARCENY

Mr. E. L. Mallalieu (Brigg) asked the Secretary of State whether his attention had been drawn to the gap in the criminal law, as a result of which it was possible for a person to receive goods knowing them to be the property of someone other than the person from whom he received them but who possessed them under a hire-purchase agreement, and yet not be guilty of an offence under s. 33 (1) of the Larceny Act, 1916 ; and what steps he would take to see that the law was made effective against dishonest receivers of goods improperly parted with by those who did not own them.

Mr. Butler said the law of larceny was defective in a number of respects, and he was considering what steps should be taken to revise it.

PERSONALIA

APPOINTMENTS

Mr. J. T. Molony, Q.C., recorder of Exeter, has been appointed a commissioner of Assize on the south-eastern circuit.

Mr. T. L. Elliot has been appointed deputy town clerk of Torquay, Devon, and took up his duties on November 24, last. He was formerly chief assistant solicitor to Gloucester county borough council and prior to that held various appointments with the borough of Willesden. The former occupant of the position, Mr. L. Womersley, M.B.E., LL.B., D.P.A., recently took up his duties as town clerk of Basingstoke.

Mr. Eric T. Mather, formerly assistant solicitor in the town clerk's office, Leigh, Lancashire, has been appointed assistant solicitor in the town clerk's office of Huddersfield county borough. He is taking the place of Mr. John Barratt, LL.M. (Manch.) who has been appointed assistant solicitor in the town clerk's office, Swansea.

Mr. R. L. Preece has been appointed clerk to Doncaster county borough justices, as from December 1, last. He succeeds his father, Mr. Martin Preece, who has retired. Mr. M. Preece had been clerk since 1935 and was previously the deputy clerk at the Doncaster, West Riding court under Mr. E. W. Pettifer. He was formerly an assistant to the clerk to the justices in Bromyard, Herefordshire. He had served for over 50 years in all, going to Doncaster in 1914. Mr. R. L. Preece was previously an assistant to Mr. G. S. Green, clerk to the Manchester county magistrates. He was admitted in July, 1954, having served for some time previously in the Doncaster office (prior to articles) under his father. He was articled to Mr. F. Wilberforce Bridge at Doncaster.

Mr. Ralph Windham, chief justice, Zanzibar, has been appointed Justice of Appeal, Court of Appeal for Eastern Africa. Mr. Windham was called to the bar by Lincoln's Inn in 1930. In 1947 he was appointed a puisne Judge, Supreme Court, Ceylon, and he served as puisne Judge, Kenya, from 1950 until 1955, when he was appointed to his present post.

RETIREMENTS AND RESIGNATIONS

Mr. Archibald William Cockburn, Q.C., chairman of London sessions since December, 1953, is to retire this month. He has sat as chairman or deputy chairman since 1938. He is 71 years of age.

Mr. W. H. Harris, M.B.E., is to retire from his appointment as clerk of Walton and Weybridge, Surrey, urban district council in June next year, exactly 25 years and one day after his appointment. Mr. Harris served earlier with Birmingham city council and Surrey county council.

Superintendent Ralph Buckingham, deputy chief constable of Oxfordshire, is retiring at the end of the year after 35 years' service in the Oxfordshire force. He joined the constabulary in 1923 and was promoted sergeant in 1935, at Witney, where he was made a superintendent 10 years later. He moved to Banbury in 1948. In 1953 he received the Queen's Police Medal.

OBITUARY

Mr. Ernest Charles Seare, formerly town clerk for Deptford metropolitan borough council, has died at the age of 85.

Mr. John Stanley McCrone, formerly chief superintendent of police for the Widnes division of Lancashire, has died. He served at Widness from 1934 to 1951.

FELLOW-FEELINGS

"All animals are equal," says a character in George Orwell's *Animal Farm*; "but some are more equal than others." This example of oxymoron must now be a favourite with the denizens of the Zoological Gardens in Regent's Park, whenever they discuss current topics of the day. For that, in brief, is at the basis of the controversy over the attempt at amendment of the byelaws of the Zoological Society of London—an attempt which has now come to grief with the reserved judgment delivered by Vaisey, J., in the Chancery Division (*Knowles* v. *Zoological Society, The Times,* December 6.) His Lordship held, in favour of the plaintiff, that a resolution at the meeting of the Society last April, purporting to adopt new byelaws, was invalid on the ground that it was not passed by a majority of the Fellows of the Society, as required by the byelaws as they then stood.

Chapter 13, s. 3, of those existing byelaws reads as follows:

> "A proposal for the making of new byelaws or for the alteration or repeal of any byelaw shall be either confirmed or rejected, and the President or other Fellow in the Chair shall refuse to accept any amendment to the proposal. Any such proposal shall be deemed to have been confirmed *if the majority of the Fellows entitled to vote shall vote in its favour,* and for this purpose voting may be in person or by proxy."

The difficulty is one familiar to legal practitioners concerned with the affairs of those companies, and other bodies corporate, whose articles of association have lacked precision in their drafting. There are some 7,000 Fellows "entitled to vote" at meetings; but the reader will observe that the words we have italicized above are not "entitled to vote and actually voting," but simply "entitled to vote." The meeting in question was attended by 3,034 Fellows "in person or by proxy"; the resolution purporting to adopt the new byelaws was supported by the votes of 1,788 Fellows, and opposed by the votes of 1,227, the remainder of those present abstaining. Taking the above italicized words in their literal meaning, said his Lordship, 3,501 votes would have been necessary to carry the resolution. In his view the object of the words "entitled to vote" must be merely to exclude Fellows whose subscriptions were in arrear (as provided by chapter 1, s. 9, of the byelaws). Following *Clay* v. *Grand Junction Water Works Co.* (1904) 21 T.L.R. 31, the learned Judge decided that, to be effective, the resolution would have had to receive the support of a majority of the whole "electorate," whether they actually voted or not. The resolution was therefore invalid, and the byelaws of the Society are still those which were in force immediately before the meeting of April 16, 1958.

With great propriety (if we may respectfully use the phrase) his Lordship refrained from expressing any opinion as to the merits of the existing byelaws or the proposed alterations, "the question before him being merely one of construction." It was otherwise with our great contemporary, "the Thunderer of Printing House Square." In a leading article which appeared the day after the judgment above-quoted, *The Times* discussed at some length, and with considerable acerbity, the open secret of the feud between what it called "the diehards of privilege" and those others who regard the new proposals as "a common-sense recognition of an anomaly much overdue for reform." Those proposals, as everyone knows by now, include the raising of the membership subscription (which has not been changed since 1832), the introduction, at special rates, of "scientific Fellows," and "having to share the Zoo on Sundays with other people." With the "escapists" (an unfortunate word, we feel) "who have been vocal in objecting" to this last reform the leader-writer got really waspish. He admonished; he scolded; and here and there (if it be not blasphemous to impute such a thing to anybody on the staff of *The Times*) he openly sneered. "The fact that, by a harmless convention, they" (the members of the Society) "are entitled to call themselves Fellows does not mean that more than a minority of them are zoologists"—that, surely, is hitting below the belt? One might as well say, with no less accuracy—"the fact that, by a harmless convention, newspaper-men are allowed to call themselves writers, does not mean that more than a minority of them are stylists." Abuse is no argument.

But the leader-writer did not pull his punches. "The longer that alterations" (in the byelaws) "remain unmade, the clearer will it become that the Fellows as a whole are parasitic in the sense that they receive financial advantages from their fellow-citizens which they do nothing to justify." This is a tilt at the use by the Society of Crown land in Regent's Park, "for admission to which it is rightly allowed to charge," and at its seeking to qualify for exemption from local rates under the Scientific Societies Act, 1843. "The main issue is that the Society has for long been organized on hopelessly out-of-date lines." Well, the same reproach might well quite easily be levelled at the Monarchy, Parliament, the Party System, the Courts, and even the Press. Why get so liverish about it?

We are beginning ourselves to feel a little nervous when we take our Sunday morning stroll in Regent's Park. The roaring of the big carnivores has taken on a fiercer and more threatening tone; the screeching of the parrakeets is louder and shriller; even the mild-tempered *Phocidae* and *Otaridae* —the seals and sea-lions—call more irascibly than usual to their mates. Doubtlessly they are expressing opinions, for and against the new proposals, after their own manner—particularly for (or against) the innovation whereby a new species of *Homo Sapiens*—other than *Societatis Socius* in a grey top-hat and swallow-tail coat—may be admitted to the precincts on Sunday mornings. Some of these debaters are perhaps admirers of Charles Dickens. If so, they will not have forgotten the acrimonious dissension between the illustrious Samuel Pickwick, Esq., G.C.M.P.C., and his colleague Tracy Tupman, Esq., M.P.C., when they were invited to attend (in fancy dress) the *fête champêtre* arranged by Mrs. Leo Hunter who, with such a name (*pace The Times*), *must* have been a zoologist:

> "I shall go as a Bandit," interrupted Mr. Tupman.
> "What!" said Mr. Pickwick, with a sudden start.
> "As a Bandit," repeated Mr. Tupman, mildly.
> "You don't mean to say," said Mr. Pickwick, gazing with solemn sternness at his friend, "You don't mean to say, Mr. Tupman, that it is your intention to put yourself into a green velvet jacket, with a two-inch tail?"
> "Such *is* my intention, Sir," replied Mr. Tupman warmly.
> "And why not, Sir?"
> "Because, Sir," said Mr. Pickwick, considerably excited, "because you are too old, Sir."
> "Sir," said Mr. Tupman, "you're a Fellow!"
> "Sir," said Mr. Pickwick, "you're another."

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*The Judges Rules—Joint offenders—Summonses issued—Statements made by each when summons served—Need to serve each with copies of statements made by co-defendants.*

Under the Judges Rules when two persons are detained in custody and make statements, an officer is required to serve copy statements on each of the defendants.

It has recently become a practice in this force to serve statements of accomplices when process is taken by means of summons. This, apparently, was brought about by an advocate in the juvenile court demanding to know why a copy of the statement made by a co-defendant had not been served on the client.

I can find no instruction or case law in the Judges Rules which calls for this to be done. In my opinion the Judges Rules refer to people detained in police custody, and defendants who are proceeded against by summons are at liberty to discuss the case among themselves, and instruct each other on what they have said. Your valued opinion on this point would be appreciated.

KUFFIN.

Answer.

We can find no authority on this point. The only help we can get is from the judgment of Lord Goddard, C.J., in *R.* v. *Mills*: *R.* v. *Lemon* [1946] 2 All E.R. 776 at p. 777 in the passage beginning "What lies at the root of r. 8 of the Judges Rules is this." It seems to us that one can deduce from this that the purpose of r. 8 is not to require the police always to serve on a defendant a copy of any statements made by a co-defendant but only to prevent them from putting any such statements orally to a defendant for the purpose referred to in Lord Goddard's judgment. Therefore, if when a defendant is served with a summons nothing is said to him about any statement made by a co-defendant, we see no reason why a copy of that statement should be served upon him.

2.—Elections—*Returning officer co-opted to parish council—Position at next election.*

As clerk of the rural district council I act as returning officer at parish council elections. A casual vacancy has occurred on the council of my home parish, and the council wishes to co-opt me as a member. It seems to me that there is nothing to prevent my accepting office for the remainder of the term, but that it would be impossible for me to stand as a candidate at the next election. I should be glad of your opinion on this point and also on the situation which would arise:

(*a*) Should there be insufficient nominations at the next election; and

(*b*) Should I be appointed chairman of the parish council.

CACKLE.

Answer.

We agree that your statutory position as returning officer does not disqualify you from being co-opted to the parish council, but that it does disqualify you from being a candidate for election. Moreover, in view of r. 13 (4) in the Election Rules it seems that, if there were insufficient candidates, you might be deemed to be elected: a position inconsistent with your duty as returning officer. We are not sure that if you became chairman your continuance as chairman until a new chairman was selected by the incoming council would in itself be inconsistent with your being returning officer, but we think embarrassment is so likely to arise that it would be undesirable to accept co-option.

3.—Highway—*Repair and maintenance of footpath and bridge.*

The British Transport Commission own a small housing estate adjacent to their works within this urban district. The roads serving the estate are public highways not maintainable by the inhabitants at large. Running between (and parallel with) two of these roads is a stream in open ground owned by the Commission but not used for any purpose. Joining these two roads is a path used by pedestrians and cyclists, which crosses the stream by a makeshift bridge put up by some local residents some years ago. The Commission have no objection to the path or the bridge, the route being a convenient short cut, but refuse to undertake any responsibility for the bridge, which has now become dangerous. The council would like to see the bridge repaired and properly maintained, but do not wish at present to take over any of the roads on the estate. Have the council any power to repair and maintain the bridge, contribute to its repair and maintenance, make any agreement in respect thereof, or call on any other body to exercise such functions?

PASFEN.

Answer.

The recital of the facts suggests that, like the adjacent roads, the path is a highway. If it was dedicated before the National Parks and Access to the Countryside Act, 1949, the local authority are, by s. 47 of that Act, liable to repair the footpath, including the bridge. If dedicated after the Act of 1949, they are not liable to repair the footpath (and bridge) unless it has complied with s. 23 of the Act of 1835 (*see* s. 49 of the Act of 1949) or it has been adopted by them. If the path is not already a highway, a public path agreement under s. 39 of the Act of 1949 would meet the case. No one else in the circumstances is liable to repair the path and bridge.

4.—Highway—*Signposts on footpaths—Consent of landowner.*

A parish council has asked the county council to place signposts on public footpaths in a rural parish. There is a permissive power in s. 24 of the Highway Act, 1835, but this appears to be restricted to the placing of direction posts at entrances only of paths, *i.e.*, presumably where a path begins at a point adjoining a main road. It is understood, however, that some county councils in the south of England have carried out extensive programmes for the signposting of public footpaths. Whilst it is appreciated that the placing of notices and signposts is an "improvement" within the meaning of the Roads Improvement Act, 1925, no specific authority can be found (i) to sanction expenditure by the county council for signposting public footpaths except where they branch from a main road, or (ii) to make it lawful for the highway authority to place such signs on public paths on private land without the consent of the owner of the land.

P. AD LIB.

Answer.

The power to erect direction posts under s. 24 of the Highway Act, 1835, is a power to erect such posts where two or more ways meet, and ways mean highways. Highways by s. 5 of the Act mean, *inter alia*, footways. Posts may be erected therefore where any kinds of highways meet. The Act does not say that consent of the landowner is necessary. We apprehend that the power may be exercised although it may cause some detriment to the landowner, so long as not exercised negligently or arbitrarily. And, as against a possible detriment, more theoretical than real, there is the advantage to landowners of keeping people on the paths, instead of straying over the land.

5.—Licensing—*Betting—Betting taking place on bowling green adjacent to licensed premises and in same occupation as licensed premises—Whether permissible under Betting and Lotteries Act*, 1934—*Licensing Act*, 1953, *s.* 141.

Attached to certain licensed premises and within the curtilage thereof is a bowling green.

The licensee serves notice on the chief officer of police, presumably under s. 2 (1) of the Betting and Lotteries Act, 1934, that on a certain day it is intended to hold a bowling match on the bowling green at which betting will be permitted.

Inquiries reveal that the bowling matches will be between professional bowlers playing for cash prizes. Admission will be charged for persons entering the green to watch the matches, and entry to the bowling green will be by means only of a side door from the licensed premises car park. The bowling green is not shown on the deposited plans as being an area in which drinking may take place.

The licensee is a tenant and the bowling green is in fact being hired from the brewery company who are the owners, by a bowling promoters association.

It would appear that having regard to the definition of "track" in s. 20 of the 1934 Act, the bowling green could be so described and therefore so far as that Act is concerned, no offence will be committed.

Your views are sought:

1. Is my view of the position in regard to the 1934 Act correct?

2. Will (*a*) the bookmaker and/or (*b*) the licensee and/or (*c*) the brewery company commit any offence under either the 1853 Act or under the 1953 Act, and if so, what are the offences?

3. Does it make any difference that the betting is stated to be credit betting?

4. It is understood that it is gaming to play a lawful game, even of skill, for money or money's worth. Is it essential that the money shall be provided by the competitors, or is it sufficient if it is provided by a third person?

5. Do you consider, and if so on what grounds, that the bowling green forms part of the licensed premises?

It would appear that if the bowling green is *not* deemed to be part of the licensed premises, then no offence will have been committed since the 1934 Act appears to permit this sort of thing. On the other hand, if the bowling green *is* deemed to be part of the licensed premises, the question then is whether the 1934 Act establishes any exemption from the normal consequences. It would seem rather odd if the bowling green were *not* part of the licensed premises, since if that were the situation, if the licensee took an order from someone on the bowling green, he would presumably be selling without a licence, and if for instance, a person at closing time took his drink out on to the bowling green, he would be entitled to finish it there without committing any offence.

NEW HALL.

Answer.

1. We agree. The definition of "track" in s. 20 of the Betting and Lotteries Act, 1934, seems to be wide enough to include the bowling green on the occasion mentioned.

2. We think that betting may take place in accordance with s. 1 of the Betting and Lotteries Act, 1934, subject to the limitations imposed by that Act.

3. We think so.

4. It seems not to be relevant to inquire from what source the prize-money comes.

5. With some doubt, we are of opinion that the bowling green would be held not to be part of the licensed premises. It seems that the bowling green might be regarded as part of the licensed premises in relation to the ascertainment of annual value of the premises for excise purposes (*see* Customs and Excise Act, 1952, sch. 4, part VI, para. 35) but we think that it would not be so deemed for all purposes.

The dilemma to which our correspondent directs attention at the end of his question does not arise if it can be shown by evidence that the place of appropriation to contracts of sale of intoxicating liquor is the public house, although sales are undoubtedly made in contemplation of the liquor being consumed on the bowling green.

6.—Private Street Works—*Adoption of strip of streets—Liability for parallel strip.*

The council have been requested to adopt in accordance with s. 2 of the New Streets Act, 1951 (Amendment) Act, 1957, street works which have been executed along the frontage of two houses in a private street to the half width of the street. The council operate the provisions of the Private Street Works Act, 1892, and it is likely that the provisions of this Act may be put in force in respect of the unmade half of the street in a few years' time, when the present priority list of streets to be made up has been completed.

Your opinion is requested:

1. If the council adopt the half width of the street, whether they or the frontagers fronting the adopted length can be held responsible for payment towards the cost of making up the other half width of road.

2. When the provisional apportionment is prepared for making up the half width street, whether one half of the end of the adopted street at its full width and the frontage of the adopted half width street would be included, as premises fronting or abutting on the part of the street being made.

P. TUDOR.

Answer.

1. The adopted part will be the frontage and the council will be liable for that frontage. Section 2 is permissive and should only be used where the full width is made up. Section 1 is the appropriate section in this case.

2. All of the sides of the half width of street to be made up should be included.

7.—Public Health Act, 1925, s. 68—*Order containing time limit—Waiver—Reservation to class of drivers.*

The town council have made an order under the above Act in respect of a certain street. The schedule to the order sets out the situation of the parking place; the hours and days to which the order applies; the method of parking which is "vehicles to be parked at right angles to the kerb"; the restriction on parking which is not to exceed a continuous period of one hour. Since the order was made white lines forming rectangles have been painted on the surface of the road forming the parking place for the guidance of motorists. More recently in three of the above rectangles the council has had written in white lettering: "Keep Clear Doctor." Please state:

1. Whether the council can grant any person licence or leave (*i.e.*, the doctors) to park for more than the permitted one hour;

2. Whether such a notice as above is illegal, or at least ineffective against a person lawfully parking in a rectangle containing such a notice.

BINDON.

Answer.

We gather that the council have not followed up their order under s. 68 (1) (*c*) of the Act of 1925 by making byelaws under subs. (6) as amended by s. 16 (4) of the Restriction of Ribbon Development Act, 1935.

The order, by itself, does not do more than legalize parking which otherwise would be an illegal obstruction of the highway. We do not think a purported reservation to a class of drivers (*e.g.*, doctors or persons attending a neighbouring church) could be made effective under the order, or indeed by means of byelaws, seeing that subs. (6) speaks of vehicles or classes of vehicles, not classes of drivers. The present query does not extend to the validity of the limitation to one hour's parking, but we doubt whether this is effective in the order, since it is subs. (6), not subs. (1), which speaks of "conditions upon which any such parking place may be used." For what the fact is worth, the model byelaws contain a limitation of period for vehicles, while the model order does not—it contains a limitation to days or times of day only. Assuming a restriction in the order to be legally effective, the council have no power to waive it in favour of classes or individuals; a person taking advantage of a purported waiver would cease to be protected by the order against proceedings for obstruction, just as purported waiver by the council of a byelaw, if byelaws had been made, would not protect a person acting upon the waiver from prosecution for breach of the byelaw.

8.—Water Supply—*Domestic supply given under contract—Enforcement.*

Since the end of the war this council developed its water undertaking, spending about £800,000 upon the laying of water mains. Many farm properties lay at such a distance from the main that it was not possible to give a service, but an arrangement was made with individual farmers to lay an extension of the main to serve their properties; in some instances the distance involved was up to half a mile. The farmers undertook to reimburse the expenditure involved over a period of 10 years by equal annual instalments, and no interest was charged. It seems, however, to be uncertain whether the council can base a claim for the amount expended in default of payment. Please let me know whether there is any way by which the difficulty can be overcome. At the present time only one debtor is refusing to pay the amount due.

BICORA.

Answer.

The query indicates that the farmers supplied could not have required a supply under s. 111 of the Public Health Act, 1936. The council were therefore by agreement with the farmers doing something they could not be compelled to do, and whatever right they have to recover the expense rests upon contract. We agree that the council have no express power to enter into such contracts, but we notice that the pipes about which the question is raised are called "an extension of the main." Section 119 of the Public Health Act, 1936, gives the same power for laying water mains as part II of the Act gives for laying public sewers, and we have lately advised that a local authority, at an earlier stage than that at which it could be compelled to lay a public sewer, has power to do so at the request of a person who promises to reimburse the cost. We should therefore upon the facts before us be inclined to take proceedings in the county court upon the contract, leaving it to the defendant if so advised to argue that the contract was *ultra vires* and is unenforceable.

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Printed by R. J. ACFORD LTD., Industrial Estate, Chichester, Sussex and published by the Proprietors, JUSTICE OF THE PEACE LTD., at the Office of the "Justice of the Peace and Local Government Review," 88, Kingsway, London, W.C.2—*Saturday*, February 7, 1959. Price 2*s.* 0*d.*